

financial statements of the combined enterprise may be supplemented with a pro forma financial presentation which shows the effects of salary changes that are supported by employment agreements. Such pro forma presentation should be limited to the latest fiscal year and any subsequent interim period presented. It should be accompanied by an explanation that (1) the supplemental pro forma presentation is shown solely as a result of changed circumstances that will exist following consummation of the merger, (2) that A's duties and responsibilities will not be diminished with the result that other costs will be incurred that offset the pro forma adjustment to compensation expense, and (3) the information is necessary for investors to realistically assess the impact of the combination. The following is an example of such supplemental pro forma presentation.

	19X1	19X2	19X3
Combined net income	\$10,000	\$11,000	\$12,000
Pro forma adjustment to compensation expense:			
Contractual reduction to be made in officer salary			60,000
Related income taxes			(30,000)
			30,000
Pro forma net income after contractual reduction to be made in officer salary			42,000
Per share of common stock:			
Net income	1.00	1.10	1.20
Pro forma after contractual reduction to be made in officer salary			4.20

[FR Doc. 82-14889 Filed 6-1-82; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 211

[Release No. SAB-46]

Interpretations Relating to Financial Reporting Matters; Staff Accounting Bulletin No. 46

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: The interpretations in this Staff Accounting Bulletin revise existing staff interpretations of requirements for interim financial reporting resulting from the adoption of Accounting Series Release Nos. 286, 302 and 306. In addition, a revised topical index is being published to reflect the impact of all actions to date on the Staff Accounting Bulletin series.

DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT:

John W. Albert, Office of the Chief Accountant (202-272-2133) or Howard P. Hodges, Jr., Chief Accountant, Division of Corporation Finance (202-272-2554), Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

May 20, 1982.

Shirley E. Hollis,

Assistant Secretary.

Staff Accounting Bulletin No. 46

The staff hereby deletes subsections 1 and 2(a) of topic 6-G of Staff Accounting Bulletin No. 40 and replaces them with the following revised staff interpretations. The staff is also amending subsection 2(b) of this same topic. These interpretations do not reflect any substantive changes in staff position. Rather, they simply reflect adoption of revised disclosure requirements for interim financial reporting announced in Accounting Series Release No. ("ASR") 286, the elimination of requirements for the presentation of separate financial statements of the parent company only and of consolidated subsidiaries engaged in diverse financial-type activities announced in ASR 302, and revisions to the disclosure requirements of Form S-K announced in ASR 306.

Topic 6: Interpretations of Accounting Series Releases

* * *

G. Accounting Series Release Nos. 177 and 286—Relating to Amendments to Form 10-Q, Regulation S-K, and Regulation S-X Regarding Interim Financial Reporting

General Facts

Disclosure requirements for quarterly data on Form 10-Q were amended in Accounting Series Release Nos. 177 and 286 to include condensed interim financial statements, a narrative analysis of financial condition and results of operations, a letter from the registrant's independent public accountant commenting on any accounting change, and a signature by the registrant's chief financial officer or chief accounting officer. In addition, certain selected quarterly data is

required to be disclosed by registrants who meet criteria both as to size and trading activity.

1. Selected Quarterly Financial Data (Item 302(a) of Regulation S-K).¹

a. Disclosure of Selected Quarterly Financial Data.

Facts:

Item 302(a)(1) of Regulation S-K requires disclosure of net sales, gross profit, income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included. Item 302(a)(3) requires the registrant to describe the effect of any disposals of segments of a business and extraordinary, unusual or infrequently occurring items recognized in each quarter, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter. Furthermore, Item 302(a)(2) requires a reconciliation of amounts previously reported on Form 10-Q to the quarterly data presented if the amounts differ.

Question 1

Are these disclosure requirements applicable to supplemental financial statements included in a filing with the SEC for unconsolidated subsidiaries and 50% or less owned persons?

Interpretive Response

The summarized quarterly financial data required by Item 302(a)(1) need not be included in supplemental financial statements for unconsolidated subsidiaries and 50% or less owned persons unless the financial statements are for a subsidiary or affiliate that is itself a registrant which meets the criteria set forth in Item 302(a)(5).

Question 2

If a company is in a specialized industry where "gross profit" generally is not computed (e.g., banks, insurance companies and finance companies) what disclosure should be made to comply with the requirements of Item 302(a)(1)?

Interpretive Response

Companies in specialized industries should present summarized quarterly financial data which are most meaningful in their particular circumstances. For example, a bank might present interest income, interest

¹As indicated in ASR 306, the Commission plans to reexamine the criteria for furnishing selected quarterly financial data in the near future.

expense, provision for loan losses, security gains or losses and net income. Similarly, an insurance company might present net premiums earned, underwriting costs and expenses, investment income, security gains or losses and net income.

Question 3

If a company wishes to make its quarterly and annual disclosures on the same basis, would disclosure of costs and expenses associated directly with or allocated to products sold or services rendered, or other appropriate data to enable users to compute "gross profit," satisfy the requirements of Item 302(a)(1)?

Interpretive Response

Yes.

Question 4

What is meant by "per-share data based upon such income" as used in Item 302(a)(1)?

Interpretive Response

Item 302(a)(1) only requires disclosure of per share amounts for income before extraordinary items and cumulative effect of a change in accounting. It is expected that when per share data is calculated for each full quarter based upon such income, the per share amounts would be both primary and fully diluted. Although it is not required by the rule, there are many instances where it would be desirable to also disclose other per share figures such as net earnings per share and the per share effect of extraordinary items. Where such disclosure is made, per share data should be both primary and fully diluted.

Question 5

What is intended by the requirement set forth in Item 302(a)(3) that registrants "describe the effect of" disposals of segments of a business, etc.?

Interpretive Response

The rule is intended to require registrants to "disclose the amount" of such unusual transactions and events included in the results reported for each quarter. Such disclosure would be made in narrative form. However, it would not require that matters covered by management's discussion and analysis of financial condition and results of operations be repeated. In this situation, registrants should disclose the nature and amount of the unusual transaction or event and refer to management's analysis for further discussion of the matter.

Question 6

What is intended by the requirement of Item 302(a)(3) to disclose "the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter"?

Interpretive Response

This language is taken directly from Paragraph 31 of Accounting Principles Board Opinion No. 28 which relates to disclosures required for the fourth quarter of the year. The Opinion indicates that earlier quarters should not be restated to reflect a change in accounting estimate recorded at year end. However, changes in an accounting estimate made in an interim period that materially affect the quarter in which the change occurred are required to be disclosed in order to avoid misleading comparisons. In making such disclosure, registrants may wish to identify (but not restate) the prior periods in which transactions were recorded which relate to the change in the quarter.

Question 7

If a company has filed a Form 8 amending a previously filed Form 10-Q, is a reconciliation of quarterly data in annual financial statements with the amounts originally reported on Form 10-Q required?

Interpretive Response

Yes. However, if the company publishes quarterly reports to shareholders and has previously made detailed disclosure to shareholders in such reports of the change reported on the Form 8, no reconciliation would be required.

b. Financial Statements Presented on Other Than a Quarterly Basis.

Facts

Item 302(a)(1) requires disclosure of quarterly financial data for each full quarter of the last two fiscal years and in any subsequent interim period for which an income statement is presented.

Question 8

If a company reports at interim dates on other than a calendar-quarter basis (e.g., 12-12-16-12 week basis), will it be precluded from reporting on such basis in the future?

Interpretive Response

No, as long as it discloses the basis of interim fiscal period reporting and the interim fiscal periods on which it reports are consistently determined from year to year (or, if not, the lack of comparability is disclosed).

c. Application of Item 302(a) Requirements.

Facts

The requirements for disclosure of the selected quarterly financial data apply only to those companies meeting both of two tests based on the size of the company and the extent of trading in its securities, respectively. The size test is measured by total assets and net income, as defined. The trading test is measured by whether a registrant's securities are listed on a national securities exchange or quoted on the National Association of Securities Dealers Automatic Quotation System and meet the specified "actively traded" criteria set forth in the rule.

Question 1

Should the determination of net income, as defined, for each of the last three fiscal years be adjusted for restatements of prior years' figures as a result of changes in accounting principles, business combinations (accounted for as poolings of interests), prior-period adjustments, etc.?

Interpretive Response

Net income, as defined, for the last three fiscal years should be determined each year on the basis of current financial statements which included those years. Such financial statements would reflect restatements, if any, of prior years' data in accordance with generally accepted accounting principles. However, as indicated in the interpretive response to Question 2 below, a registrant will not be required to retroactively disclose the quarterly financial data called for by Item 302(a) for the prior year as a result of such restatements if it did not meet such a requirement when the prior year financial statements were originally filed with the Commission.

Question 2

Is a registrant which meets the requirements to furnish selected quarterly financial data for the first time in the current year required to retroactively include the quarterly financial data for prior years' financial statements presented for comparative purposes?

Interpretive Response

No. Although Item 302(a)(1) requires disclosure of selected quarterly financial data for the two most recent years, a registrant will not be required to retroactively include the quarterly financial data called for by this instruction if it did not meet such a requirement when the financial statements were originally filed with the Commission.

Question 3

Is a closed-end investment company subject to the Investment Company Act of 1940 required to comply with the disclosure requirements of Item 302(a)?

Interpretive Response

A closed-end investment company which has securities registered pursuant to section 12(b) of the Exchange Act is not exempt from the requirements of Item 302(a). However, a closed-end investment company that is exempt from registration under section 12(g) of the Exchange Act is exempt from the requirements of Item 302(a).

Question 4

Should the \$200 million total assets and \$250,000 net income for each of the last three fiscal years tests be made at the beginning or end of the fiscal year?

Interpretive Response

In order to facilitate the engagement of independent accountants to perform a limited review of the quarterly financial statements on a timely basis, if desired, the size and income tests of Item 302(a) should be applied at the beginning of the fiscal year.

2. Amendments to Form 10-Q.**a. Form of Condensed Financial Statements.****Facts**

Rules 10-01(a) (2) and (3) of Regulation S-X provide that interim balance sheets and statements of income shall include only major captions (i.e., numbered captions) set forth in Regulation S-X, with the exception of inventories where data as to raw materials, work in process and finished goods shall be included, if applicable, either on the face of the balance sheet or in notes thereto. Where any major balance sheet caption is less than 10% of total assets and the amount in the caption has not increased or decreased by more than 25% since the end of the preceding fiscal year, the caption may be combined with others. When any major income statement caption is less than 15% of average net income for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20% as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. Similarly, the statement of changes in financial position may be abbreviated, starting with a single figure of funds provided by operations and showing other sources and applications individually only when they exceed 10% of the average of funds

provided by operations for the most recent three years.

Question 1

If a company previously combined captions in a Form 10-Q but is required to present such captions separately in the Form 10-Q for the current quarter, must it retroactively reclassify amounts included in the prior-year financial statements presented for comparative purposes to conform with the captions presented for the current-year quarter?

Interpretive Response

Yes.

Question 2

In determining whether or not major income statement captions may be combined, does average "net income" for the last three years (using the company's last year end as the starting point) mean "net income" or income before extraordinary items and changes in accounting principles?

Interpretive Response

It means "net income."

Question 3

If a company uses the gross profit method or some other method to determine cost of goods sold for interim periods, will it be acceptable to state only that it is not practicable to determine components of inventory at interim periods?

Interpretive Response

The staff believes disclosure of inventory components is important to investors. In reaching this decision the staff recognizes that registrants may not take inventories during interim periods and that managements, therefore, will have to estimate the inventory components. However, the staff believes that management will be able to make reasonable estimates of inventory components based upon their knowledge of the company's production cycle, the costs (labor and overhead) associated with this cycle as well as the relative sales and purchasing volume of the company.

Question 4

If a company has years during which operations resulted in a net outflow of funds, should it exclude such years from the computation of funds provided by operations for the three most recent years in determining what sources and applications must be shown separately?

Interpretive Response

Yes. Similar to the determination of average net income, if operations

resulted in a net outflow of funds during any year, such amount should be excluded in making the computation of funds provided by operations for the three most recent years unless operations resulted in a net outflow of funds in all three years, in which case the average of the net outflow of funds should be used for the test.

Question 5

Must a company include an analysis of changes in each element of working capital in the condensed statement of changes in financial position included in its Form 10-Q?

Interpretive Response

No. The statement of changes in financial position can be abbreviated and needs to include only funds provided by operations and other sources and applications of funds which exceed 10% of the average of funds provided by operations for the most recent three years.

b. Reporting Requirements for Accounting Changes.**1. Preferability.****Facts**

Rule 10-01(b)(6) of Regulation S-X requires that a registrant who makes a material change in its method of accounting shall indicate the date of and the reason for the change. The registrant also must include as an exhibit in the first Form 10-Q filed subsequent to the date of an accounting change, a letter from the registrant's independent accountants indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances. A letter from the independent accountant is not required "when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such a change."

* * * * *

2. Filing of a Letter from the Accountants.**Facts**

The registrant makes an accounting change in the fourth quarter of its fiscal year. Rule 10-01(b)(6) of Regulation S-X requires that the registrant file a letter from its independent accountants stating whether or not the change is preferable in the circumstances in the next Form 10-Q. Item 601(b)(18) of Regulation S-K provides that the independent accountant's preferability letter be filed as an exhibit to reports on Forms 10-K or 10-Q.

Question 1

When the independent accountant's letter is filed with the Form 10-K, must another letter also be filed with the first quarter's Form 10-Q in the following year?

Interpretive Response

No. A letter is not required to be filed with Form 10-Q if it has been previously filed as an exhibit to the Form 10-K.

**Staff Accounting Bulletin Series—
Revised Topical Index Through Staff
Accounting Bulletin No. 46**

Topic 1: Financial Statements

- A. Target Companies
- B. (Deleted by SAB 44)
- C. Unaudited Financial Statements for a Full Year
- D. Foreign Companies
 - 1. (Deleted by Rel. 33-6362)
 - 2. "Free Distributions" by Japanese Companies
- E. Requirements for Audited or Certified Financial Statements
 - 1. Meaning of the Word "Audited"
 - 2. Qualified Auditors' Opinions

Topic 2: Business Combinations

- A. Purchase Method
 - 1. Cash Contingencies
 - 2. Determination of the Acquiring Corporation
- 3. Acquisitions Involving Financial Institutions (Added by SAB 42)
- B. Merger Expenses
- C. Pro Forma Financial Information (Added by SAB 45)

Topic 3: Senior Securities

- A. Convertible Securities
- B. (Deleted by ASR 307)
- C. Balance Sheet Presentation for Preferred Stock with Sinking Funds or Mandatory Redemption Features

Topic 4: Equity Accounts

- A. Subordinated Debt
- B. Subchapter S Corporations
- C. Change in Capital Structure
- D. Cheap Stock
- E. Receivables from Sale of Stock
- F. Limited Partnerships
- G. Notes and Other Receivables from Affiliates

Topic 5: Miscellaneous Accounting

- A. Expenses of Offering
- B. Gain or Loss from Disposition of Equipment
- C. Tax Benefit of Loss Carryforwards
 - 1. Current Recognition of Tax Benefit
 - 2. Realization of tax Benefit
- D. Organization and Offering Expenses and Selling Commissions—Limited Partnerships Trading in Commodity Futures
- E. Accounting for Divestiture of a Subsidiary or Other Business Operation
- F. Accounting Changes Not

Retroactively Applied Due to Immateriality

Topic 6: Interpretations of Accounting Series Releases

- A. Accounting Series Release No. 166—Disclosure of Unusual Risks and Uncertainties in Financial Reporting
- 1. Market Value Changes
- B. (Deleted by SAB 44)
- C. (Deleted by SAB 44)
- D. Accounting Series Release No. 257—Requirements for Financial Accounting and Reporting Practices for Oil and Gas Producing Activities

- 1. Estimates of Quantities of Proved Reserves
- 2. Estimates of Future Net Revenues
- 3. Disclosure of Reserve Information
- 4. Filings by Canadian Registrants
- E. Accounting Series Release No. 269—Oil and Gas Producers—Supplemental Disclosure on the Basis of Reserve Recognition Accounting

- 1. Provision for Income Taxes
- F. Accounting Series Release No. 125—Adoption of Amendments to Regulation S-X

- 1. Rule 12-03
- G. Accounting Series Release No. 177—Relating to Amendments to Form 10-Q and Regulation S-X Regarding Interim Financial Reporting

- 1. Selected Quarterly Financial Data (Revised by SAB 46)
- 2. Amendments to Form 10-Q (Revised by SAB 46)

- H. Accounting Series Release No. 148—Disclosure of Compensating Balances and Short-Term Borrowing Arrangements

- 1. Applicability
- 2. Classification of Short-Term Obligations
- 3. Compensating Balances
- 4. Miscellaneous

- I. Accounting Series Release No. 149—Improved Disclosure of Income Tax Expense

- 1. Tax Rate
- 2. Taxes of Investee Company
- 3. Net of Tax Presentation
- 4. Loss Years
- 5. Foreign Registrants
- 6. Securities Gains and Losses
- 7. Tax Expense Components v. "Overall" Presentation

- J. Accounting Series Release No. 261—Accounting Changes by Oil and Gas Producers

- 1. First-time Registrants (Added by SAB 41)

- K. Accounting Series Release No. 302—Separate Financial Statements Required by Regulation S-X

- 1. Early Adoption (Added by SAB 43)
- 2. Parent Company Financial

Information (Added by SAB 44)

- 3. Undistributed Earnings of 50% or Less Owned Persons (Added by SAB 44)

- 4. Application of Significant Subsidiary Test to Investees and Unconsolidated Subsidiaries (Added by SAB 44)

Topic 7: Real Estate Companies

- A. Reporting Requirements
- B. Land Development Companies
- C. Schedules of Real Estate and Accumulated Depreciation, and of Mortgage Loans on Real Estate
- D. Income before Depreciation

Topic 8: Retail Companies

- A. Sales of Leased or Licensed Departments
- B. Finance Charges

Topic 9: Finance Companies

- A. Points
- B. (Deleted by ASR 307)

Topic 10: Utility Companies

- A. Financing by Electric Utility Companies Through Use of Construction Intermediaries
- B. Estimated Future Costs Related to Spent Nuclear Fuel and Nuclear Electric Generating Plants
- C. Jointly Owned Electric Utility Plants
- D. Long-Term Contracts for Purchase of Electric Power

Topic 11: Miscellaneous Disclosure

- A. Operating-Differential Subsidies
- B. Depreciation and Depletion Excluded from Cost of Sales
- C. Tax Holidays
- D. Offsetting Assets and Liabilities
- E. Chronological Ordering of Data
- F. LIFO Liquidations
- G. Tax Equivalent Adjustment in Financial Statements of Bank Holding Companies

Note.—This topical index has been revised to reflect the impact of all actions affecting the Staff Accounting Bulletin series up through the issuance of Staff Accounting Bulletin No. ("SAB") 46. This index updates the index previously published in SAB 40 (January 23, 1981). For the convenience of users, the sources of any changes to the index published in SAB 40 are identified parenthetically.

[FR Doc. 82-14890 Filed 6-1-82; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34-18737; File Nos. S7-855, 856, 922 and 923]

**Net Capital Requirements for Brokers
and Dealers**

Correction

In FR Doc. 82-13819 appearing on page 21759 in the issue of Thursday,

May 20, 1982, make the following correction.

On page 21775, third column, the twenty-sixth line should read: "or an irrevocable letter of credit issued by a". [This correction affects § 240.15c3-3(b)(3)(iii).]

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 18 and 240

[T.D. ATF-104; Notice No. 384]

Reduction of the Regulatory Requirements on Producers of Volatile Fruit-Flavor Concentrate

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule minimizes the regulatory requirements on producers of volatile fruit-flavor concentrate. These regulatory requirements appear in 27 CFR Parts 18 and 240.

Due to the limited jeopardy to the revenue, absence of a petition of abuse, and the small number of producers, ATF feels the continuation of historical regulatory requirements pertaining to concentrate producers is not in the best interest of the industry or the Government. ATF also feels the liberalization of these regulatory requirements is not contrary to its duty to protect the revenue. Therefore, ATF is issuing this final rule which promotes industry and Government efficiency by relaxing, where possible, regulatory requirements while continuing to provide adequate protection to the revenue.

EFFECTIVE DATE: July 2, 1982.

FOR FURTHER INFORMATION CONTACT: Jim Whitley, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On September 18, 1981, ATF published Notice of Proposed Rulemaking No. 384 in the *Federal Register* (46 FR 46340), proposing to minimize the regulatory requirements on producers of volatile fruit-flavor concentrate. ATF solicited public comment concerning the proposal. Specific comments were requested concerning other regulatory requirements which could be liberalized or deleted, elimination of the

requirements for a bond, changes in the elimination of certain recordkeeping requirements, and the benefit or detriment to the industry and the consumer perceived to result from implementation of the proposed rule.

Written Comments

ATF received four comments in response to its notice of proposed rulemaking. These comments were of a general nature and fully supported the changes advanced in the notice of proposed rulemaking. All of the comments were from industry members who produce volatile fruit-flavor concentrate from citrus fruit.

Two commenters recommended the manufacture of volatile fruit-flavor concentrate from citrus fruit be totally exempted from regulatory requirements since, although containing alcohol, they are nonpotable because of their concentrated form because of their natural constituents. ATF acknowledges this recommendation; however, for the following reasons, it cannot be adopted. It is ATF's understanding that although some volatile fruit-flavor concentrates manufactured from citrus fruit are nonpotable because of their natural constituents, some are potable. In addition, volatile fruit-flavor concentrate manufactured from citrus fruit, or any other type of volatile fruit-flavor concentrate, may be diluted to the point it becomes a potable alcoholic solution which may be used for beverage purposes. For these reasons, ATF believes the general exemption of any manufacturer of volatile fruit-flavor concentrate from regulatory requirements would be inappropriate and contrary to our obligation to protect the revenue. Furthermore, to protect the revenue, Congress, by statute (26 U.S.C. 5001(a)(7) and 26 U.S.C. 5511), made all manufacturers and the manufacturing of volatile fruit-flavor concentrate subject to regulatory requirements. As a result, ATF may not exempt any manufacturer or the manufacturing of volatile fruit-flavor concentrate from the purview of the regulations.

New Regulations

This final rule revises the regulations in 27 CFR Part 18. These regulations relate to the location, construction, arrangement, equipment, and qualification of plants for the manufacture of volatile fruit-flavor concentrate (essence); and to the production, removal, sale, transportation, and use of concentrate and of the fruit mash or juice from which concentrate is produced. In addition, conforming revisions are made to 27 CFR Part 240.

This final rule provides simplified guidelines for the qualification and operation of concentrate plants. Numerous regulatory requirements are diminished or deleted. The major changes made to 27 CFR Part 18 and 27 CFR Part 240 are as follows:

(a) 27 CFR Part 18.

(1) *Qualification.* The requirement for submission of a plat and plan depicting the concentrate plant premises is deleted. The requirement for submission of a detailed plant description that includes major equipment, flow plants, and a statement of process is deleted. The requirement for listing all officers and directors is diminished to require only a listing of the officers and directors who have responsibility in connection with the operation of the concentrate plant.

(2) *Changes in proprietorship, control, and name.*

Changes in proprietorship, control, and name must still be submitted. However, the requirements have been made less stringent.

(3) *Changes in equipment and process.* The requirement to file an amended application covering changes in plant equipment (except stills) or the production process is deleted.

(4) *Bonds.* Bonds and consents of surety are no longer required.

(5) *Operations.* Operational requirements are relaxed. Equipment need not be marked as to use, etc., unless required by the regional regulatory administrator. Submission of a sample of each high-proof concentrate to be produced is no longer required. The concentrate plant proprietor will now be responsible for determining whether a particular concentrate is a high-proof concentrate. However, a proprietor may at any time submit a sample to the ATF National Laboratory for a determination of whether a concentrate is unfit for beverage use (nonpotable). The requirement that a proprietor notify the regional regulatory administrator of his suspension and resumption of operations is deleted.

(6) *Forms.* Four ATF forms are eliminated, one ATF form is changed from a monthly to an annual report, and one form is no longer required to be submitted by concentrate plant proprietors.

ATF Forms 3873(5520.1)—Application for Fruit-Flavor Concentrate and 3874 (5520.5)—Notice of Transfer of Fruit-Flavor Concentrate are eliminated. ATF Form 1694(5110.70)—Concentrate Manufacturer's Bond is eliminated. ATF Form 1695(5520.2)—Monthly Report of Concentrate Manufacturer is changed to an annual report. ATF Form 1533

(5000.18)—Consent of Surety is no longer required. ATF Form 27-G SUPPLEMENTAL (5520.4)—Application for Production of High Proof Concentrate is eliminated.

(7) *Records.* Where feasible, commercial records have been substituted for prescribed forms. A commercial record of transfer for all products shipped from a concentrate plant is now required. The record of transfer covering products shipped to a bonded wine cellar replaces the certificate that a bonded wine cellar proprietor secured from a concentrate plant proprietor.

(b) 27 CFR Part 240.

Several conforming changes are made to 27 CFR Part 240 regarding the elimination of ATF Forms 3873(5520.1) and 3874(5520.5). The recording of losses in transit or other discrepancies for concentrate received, which was formerly done on ATF Form 3874(5520.5), is transferred to the commercial record of material received and used.

General Information

These regulations modernize and simplify the requirements for proprietors to qualify and operate concentrate plants. In addition, where possible, ATF has minimized the regulatory requirements on producers of concentrate. As revised, 27 CFR Part 18 contains 37 regulation sections. This is a decrease of 34 sections. As stated previously, four public use forms are eliminated.

Furthermore, proprietors of concentrate plants benefit from this rule, in that potentially costly administrative burdens have been alleviated. Each major change, detailed in the NEW REGULATIONS portion of this preamble, is modernizing, liberalizing, and simplifying in nature. In addition, ATF feels these changes reflect an adherence to the spirit as well as the letter of Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This rule is not expected to: Have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal authors of this document are John Ference and Jim Whitley of the Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

List of Subjects

27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Exports, Labeling, Reporting requirements, Security measures, Spices and flavorings, Stills, and Surety bonds;

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfer, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific Equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine, and Vinegar.

Authority and Issuance

Accordingly, under the authority in 26 U.S.C. 7805 (68A Stat. 917), the regulations contained in 27 CFR Part 18—Production of Volatile Fruit-Flavor Concentrate and 27 CFR Part 240—Wine are, respectively, revised and amended as follows:

Sec. A. Part 18 is revised in its entirety as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

Subpart A—Scope

- Sec.
- 18.1 Scope.
- 18.2 Applicability of law.
- 18.3 Unlawful operations.

Subpart B—Definitions

- 18.11 Meaning of terms.

Subpart C—Administrative and Miscellaneous Provisions

- 18.13 Alternate methods or procedures.
- 18.14 Emergency variations from requirements.
- 18.15 Right of entry and examination.
- 18.16 Forms prescribed.

Document Requirements

- 18.17 Retention of documents.
- 18.18 Execution under penalties of perjury.
- 18.19 Security.

Subpart D—Qualification

- 18.21 General.
- 18.22 Restrictions as to location and use.
- 18.23 Stills.

Application

- 18.24 Data for application.
- 18.25 Organizational documents.
- 18.26 Powers of attorney.
- 18.27 Additional requirements.

Changes After Original Establishment

- 18.31 General requirement.
- 18.32 Change in name.
- 18.33 Change in location.
- 18.34 Continuing partnerships.
- 18.35 Change in proprietorship.
- 18.36 Change in officers and directors.
- 18.37 Change in stockholders.
- 18.38 Permanent discontinuance.

Subpart E—Operations

- 18.51 Processing material.
- 18.52 Production of high-proof concentrate.
- 18.53 Use of concentrate.
- 18.54 Transfer of concentrate.
- 18.55 Label.
- 18.56 Return of concentrate.

Subpart F—Records and Reports

- 18.61 Records and reports.
- 18.62 Record of transfer.
- 18.63 Record of transfer to a bonded wine cellar.
- 18.64 Photographic copies of records.
- 18.65 Annual report.

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805), unless otherwise noted.

Subpart A—Scope

§ 18.1 Scope.

The regulations in this part relate to the qualification and operation (including activities incident thereto) of plants for the manufacture of volatile fruit-flavor concentrate (essence). The regulations in this part apply to the

several States of the United States and the District of Columbia.

§ 18.2 Applicability of law.

Except as specified in 26 U.S.C. 5511, the provisions of 26 U.S.C. Chapter 51 are not applicable to the manufacture, by any process which includes evaporations from the mash or juice of any fruit, of any volatile fruit-flavor concentrate if—

(a) The concentrate, and the mash or juice from which it is produced, contains no more alcohol than is reasonably unavoidable in the manufacture of the concentrate; and

(b) The concentrate is rendered unfit for use as a beverage before removal from the place of manufacture, or (in the case of concentrate which does not exceed 24 percent alcohol by volume) the concentrate is transferred to a bonded wine cellar for use in the production of natural wine; and

(c) The manufacturer of concentrate complies with all requirements for the protection of the revenue with respect to the production, removal, sale, transportation, and use of concentrate, and of the mash or juice from which it is produced, as may be prescribed by this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.3 Unlawful operations.

(a) A manufacturer of concentrate who violates any of the conditions stated in § 18.2 is subject to the taxes and penalties otherwise applicable under 26 U.S.C. Chapter 51 in respect to such operations.

(b) Any person who sells, transports, or uses any concentrate or the mash or juice from which it is produced in violation of law or regulations is subject to all the provisions of 26 U.S.C. Chapter 51 pertaining to distilled spirits and wines, including those requiring the payment of the tax thereon.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Subpart B—Definitions

§ 18.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bonded wine cellar. Premises established under 27 CFR Part 240 for the production, blending, cellar treatment, storage, bottling, or packaging of untaxed wine, and includes premises designated as "bonded winery."

Concentrate. Any volatile fruit-flavor concentrate (essence) produced by any process which includes evaporations from any fruit mash or juice.

Concentrate plant. An establishment qualified under this part for the production of concentrate.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the application, report, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this — (insert type of document, such as application or report), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct and complete."

Fold. The ratio of the volume of the fruit mash or juice to the volume of the concentrate produced from the fruit mash or juice. For example, one gallon of concentrate of 100-fold would be the product from 100 gallons of fruit mash or juice.

Fruit. All products commonly known and classified as fruit, berries, or grapes.

Fruit mash. Any unfermented mixture of juice, pulp, skins, and seeds prepared from fruit, berries, or grapes.

High-proof concentrate. For the purposes of this part, "high-proof concentrate" means a concentrate (essence), as defined in this section, that has an alcohol content of more than 24 percent by volume and is unfit for beverage use (nonpotable) because of its natural constituents, i.e. without the addition of other substances.

Juice. The unfermented juice (concentrated or unconcentrated) of fruit, berries, or grapes, exclusive of pulp, skins, or seeds.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Processing material. The fruit mash or juice from which concentrate is produced.

Proprietor. A person qualified under this part to operate a concentrate plant.

Regional regulatory administrator. The principal ATF regional official responsible for administering regulations in this part.

Registry number. The number assigned to a concentrate plant by the regional regulatory administrator.

U.S.C. The United States Code.

Subpart C—Administrative and Miscellaneous Provisions

§ 18.13 Alternate methods or procedures.

(a) **General.** The proprietor, on specific approval by the Director, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

(b) **Application.** A proprietor who desires to employ an alternate method or procedure shall submit a written application to the regional regulatory administrator, for transmittal to the Director. The application will specifically describe the proposed alternate method or procedure and set forth the reasons therefor. Alternate methods or procedures may not be employed until the application has been approved by the Director. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of the authorization.

§ 18.14 Emergency variations from requirements.

(a) **General.** The regional regulatory administrator may approve emergency variations from requirements specified in this part, where the regional regulatory administrator finds that an emergency exists, the proposed

variations are necessary, and the proposed variations—

(1) Will afford the security and protection to the revenue intended by the prescribed specifications;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations stated in the approval of the application. Failure to comply in good faith with such procedures, conditions and limitations will automatically terminate the authority for such variations and the proprietor thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the regional regulatory administrator the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation.

(b) *Application.* A proprietor who desires to employ emergency variations shall submit a written application to the regional regulatory administrator. The application will describe the proposed variations and set forth the reasons therefor. Variations will not be employed until the application has been approved, except when an emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the regional regulatory administrator via telephone.

§ 18.15 Right of entry and examination.

ATF officers may at all times, as well by night as by day, enter any concentrate plant to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as they deem necessary. Whenever ATF officers, having demanded admittance and declared their name and office, are not admitted into such premises by the proprietor or other person having charge thereof, they may at all times use such force as is necessary for them to gain entry to such premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1357, as amended, 1392, as amended (26 U.S.C. 5203, 5511))

§ 18.16 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form will be furnished as indicated by

the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form will be furnished as required by this part.

(b) The forms required by this part are detailed in "Public Use Forms" (ATF Publication 1322.1), a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(c) Submit requests for forms to the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

Document Requirements

§ 18.17 Retention of documents.

The proprietor shall maintain a file of all approved applications and other documents, on or convenient to the concentrate plant premises, available for inspection by ATF officers.

§ 18.18 Execution under penalties of perjury.

When a form or other document called for under this part is required to be executed under penalties of perjury, it will be so executed, as defined in § 18.11, and signed by an authorized person.

(Act of August 16, 1954, Pub. L. 591, Chapter 736, 68A Stat. 749 (26 U.S.C. 6065))

§ 18.19 Security.

The concentrate plant and equipment will be so constructed, arranged, equipped, and protected as to afford adequate protection to the revenue and facilitate inspection by ATF officers.

Subpart D—Qualification

§ 18.21 General.

A person who desires to engage in the business of manufacturing concentrate shall submit an application for registration on Form 27-G (5520.3) to the regional regulatory administrator and receive approval as provided in this part. All written statements, affidavits, and other documents submitted in support of the application or incorporated by reference are deemed a part thereof.

§ 18.22 Restrictions as to location and use.

(a) *Restrictions.* A concentrate plant may not be established in any dwelling house or on board any vessel or boat, or on any premises where any other business is conducted. The premises of a concentrate plant may be used only for

the business stated in the approved application for registration.

(b) *Exceptions.* The regional regulatory administrator may authorize (1) the establishment of a concentrate plant on premise where other business is conducted, or (2) the use of the premises of a concentrate plant for other business. A person or proprietor desiring such authorization shall submit a written application to the regional regulatory administrator. The application will describe the other business by type and the premises to be used. If the premises of a concentrate plant are to be used for other business, the relationship (if any) to the concentrate plant will be described in the application. A concentrate plant may not be established on premises where other business is conducted or used to conduct other business until the application is approved. The regional regulatory administrator may decline to approve the application or withdraw the authorization if the revenue is jeopardized or the effective administration of this part is hindered.

§ 18.23 Stills.

(a) Any stills set up on concentrate plant premises and intended for the production of concentrate will be registered with the regional regulatory administrator of the region in which located, as required by 27 CFR 196.45. The listing of stills in the application and the approval of the application constitutes registration of such stills.

(b) The special occupational and commodity taxes imposed by 26 U.S.C. 5101 are not applicable to any stills set up on concentrate plant premises and used in the production of concentrate pursuant to this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1355, as amended, 1392, as amended (26 U.S.C. 5179, 5511))

Application

§ 18.24 Data for application.

Applications on Form 27-G (5520.3) will include the following:

- (a) Serial number;
 - (b) Name and principal business address of the applicant, and the location of the plant if different from the business address;
 - (c) Purpose for which filed;
 - (d) Information regarding proprietorship, supported by the organizational documents listed in § 18.25; and
 - (e) Description of each still and a statement of its maximum capacity.
- Where any of the information required by this section is on file with the

regional regulatory administrator, that information, if accurate and complete, may be incorporated by reference by the applicant and made a part of the application.

§ 18.25 Organizational documents.

The supporting information required by paragraph (d) of § 18.24 includes, as applicable:

(a) Extracts from the articles of incorporation or from the minutes of meetings of the board of directors, authorizing the incumbents of certain offices, or other persons, to sign for the corporation;

(b) Names and addresses of the officers and directors (Do not list officers and directors who have no responsibility in connection with the operation of the concentrate plant.);

(c) Names and addresses of the 10 persons having the largest ownership or other interest in the corporation or other entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another for him; and

(d) In the case of an individual owner or a partnership, the name and address of every person interested in the concentrate plant, whether the interest appears in the name of the interested party or in the name of another for him.

§ 18.26 Powers of attorney.

The proprietor shall execute and file with the regional regulatory administrator a Form 1534 (5000.8) for every person authorized to sign or to act on behalf of the proprietor. (Not required for persons whose authority is furnished in the application.)

§ 18.27 Additional requirements.

(a) The regional regulatory administrator, to protect the revenue, may require—

- (1) Additional information in support of an application for registration;
 - (2) Marks on major equipment to show serial number, capacity, and use;
 - (3) Installation of meters, tanks, pipes, or other apparatus; and
 - (4) Installation of security devices.
- (b) Any proprietor refusing or neglecting to comply with any requirement of this section shall not be permitted to operate.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1349, as amended, 1353, as amended, 1395, as amended (26 U.S.C. 5172, 5178, 5552))

Changes After Original Establishment

§ 18.31 General requirements.

Where there is a change with respect to the information shown in the application, the proprietor shall submit,

within 30 days of the change (except as otherwise provided in this part), an amended application on Form 27-G (5520.3).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.32 Change in name.

The proprietor shall submit an amended application to cover any change in the individual, firm, or corporate name.

§ 18.33 Change in location.

The proprietor shall submit an amended application to cover a change in the location of a concentrate plant. Operation of the concentrate plant may not be commenced at the new location prior to approval of the amended application.

§ 18.34 Continuing partnerships.

If, under the laws of the particular State, the partnership is not immediately terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to operate the plant under the prior qualification of the partnership. If the surviving partner acquires the business on completion of the settlement of the partnership, such partner shall qualify in his own name from the date of acquisition, as provided in § 18.35. The rule set forth in this section also applies where there is more than one surviving partner.

§ 18.35 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a concentrate plant, the outgoing proprietor shall comply with the requirements of § 18.38, and the successor shall, before commencing operations, file application and receive approval in the same manner as a person qualifying as the proprietor of a new concentrate plant. Processing material, concentrate and other materials may be transferred from an outgoing proprietor to a successor.

(b) *Fiduciary.* A successor to the proprietorship of a concentrate plant who is an administrator, executor, receiver, trustee, assignee, or other fiduciary shall comply with the provisions of paragraph (a) of this section. If the fiduciary was appointed by a court, the effective dates of the qualifying documents filed by the fiduciary shall be the effective date of the court order, or the date specified therein for the fiduciary to assume

control. If the fiduciary was not appointed by a court, the date the fiduciary assumes control shall coincide with the effective date of the qualifying documents filed by the fiduciary.

§ 18.36 Change in officers and directors.

The proprietor shall submit an amended application to cover changes in the list of officers and directors furnished under the provisions of § 18.25.

§ 18.37 Change in stockholders.

The proprietor shall submit changes in the list of stockholders furnished under the provisions of § 18.25 annually on May 1. When the sale or transfer of capital stock results in a change of control or management of the business, the proprietor shall comply with the provisions of § 18.35.

§ 18.38 Permanent discontinuance.

A proprietor who permanently discontinues the business of a concentrate manufacturer shall, after completion of operations, file an application on Form 27-G (5520.3) to cover such discontinuance, giving the date of the discontinuance.

Subpart E—Operations

§ 18.51 Processing material.

(a) *General.* A proprietor may produce processing material or receive processing material produced elsewhere. Fermented processing material may not be used in the manufacture of concentrate. Processing material may be used if it contains no more alcohol than is reasonably unavoidable, and must be used when produced, or as soon thereafter as practicable.

(b) *Record of processing material.* A proprietor shall maintain a record, by kind and quantity, of processing material used.

§ 18.52 Production of high-proof concentrate.

(a) *General.* High-proof concentrate may be produced in a concentrate plant. Concentrate having an alcohol content of more than 24 percent by volume that is fit for beverage use may not be produced in a concentrate plant.

(b) *Determination.* A proprietor shall determine whether a particular concentrate is a high-proof concentrate. However, a proprietor may at any time submit a written request to the Director for a determination of whether a concentrate is unfit for beverage use. Each request for a determination will include information as to kind, percent alcohol by volume, and fold of the

concentrate. The request will be accompanied by a representative 8-ounce sample of the concentrate.

§ 18.53 Use of concentrate.

Concentrate may be used in the manufacture of any product made in the conduct of another business authorized to be conducted on concentrate plant premises under the provisions of § 18.22, if such product contains less than one-half of one percent of alcohol by volume.

§ 18.54 Transfer of concentrate.

(a) *Concentrate unfit for beverage use.* Concentrate (including high-proof concentrate and concentrate treated as provided in paragraph (c) of this section) unfit for beverage use may be transferred for any purpose authorized by law.

(b) *Concentrate fit for beverage use.* Concentrate fit for beverage use may be transferred only to a bonded wine cellar. If such concentrate is rendered unfit for beverage use, it may be transferred as provided in paragraph (a) of this section.

(c) *Rendering concentrate unfit for beverage use.* Concentrate may be rendered unfit for beverage use by reducing the alcohol content to not more than 15 percent alcohol by volume (if the reduction does not result in a concentrate of less than 100-fold), and adding to each gallon thereof, in a quantity sufficient to render the concentrate unfit for beverage use, the following:

- (1) Sucrose; or
 - (2) Concentrated fruit juice, of at least 70 Brix, made from the same kind of fruit as the concentrate; or
 - (3) Malic, citric, or tartaric acid.
- (d) *Record of transfer.* The proprietor shall record transfers of concentrate (including high-proof concentrate) on a record of transfer as required in §§ 18.62 or 18.63.

§ 18.55 Label.

Each container of concentrate will have affixed thereto, before transfer, a label identifying the product and showing (a) the name of the proprietor; (b) the registry number of the plant; (c) the address of the plant; (d) the number of wine gallons; and (e) the percent of alcohol by volume.

§ 18.56 Return of concentrate.

(a) *General.* The proprietor of a concentrate plant may accept the return of concentrate shipped by him.

(b) *Record of returned concentrate.* When the returned concentrate is received, the proprietor shall record the receipt, including a notation regarding any loss in transit or other discrepancy.

(c) *Report of returned concentrate.* The quantity of returned concentrate received will be reported on an unused line on the annual report Form 1695(5520.2).

Subpart F—Records and Reports

§ 18.61 Records and reports.

(a) *General.* Each proprietor shall keep records and reports as required by this part. These records and reports will be maintained on or convenient to the concentrate plant and will be available for inspection by ATF officers during business hours. Records and reports will be retained by the proprietor for three years from the date they were prepared, or three years from the date of the last entry, whichever is later.

(b) *Records.* Each proprietor shall keep such records relating to or connected with the production, transfer, or return of concentrate and the juice or mash from which it is produced, as will (1) enable any ATF officer to verify operations and to ascertain whether there has been compliance with law and regulations, and (2) enable the proprietor to prepare Form 1695(5520.2). A proprietor need not prepare a specific record to meet the record requirements of this part. Any book, paper, invoice, bill of lading, or similar document that the proprietor prepares or receives for other purposes may be used, if all required information is shown.

(c) *Reports.* Each proprietor shall prepare and submit reports (including applications) as required by this part.

§ 18.62 Record of transfer.

When concentrate, juice, or fruit mash is transferred from the concentrate plant premises, the proprietor shall prepare, in duplicate, a record of transfer. The record of transfer may consist of a commercial invoice, bill of lading, or any other similar document. The proprietor shall forward the original of the record of transfer to the consignee and retain the copy as a record. Each record of transfer shall show the following information:

- (a) Name, registry number, and address of the concentrate plant;
- (b) Name and address of the consignee;
- (c) Kind (by fruit from which produced) and description of product, e.g. grape concentrate, concentrated grape juice, unconcentrated grape juice, grape mash;
- (d) Quantity (in wine gallons); and
- (e) For concentrate, percent of alcohol by volume.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.63 Record of transfer to a bonded wine cellar.

A proprietor transferring concentrate, juice, or fruit mash to a bonded wine cellar shall prepare a record of transfer as required by § 18.62 and enter the following additional information:

- (a) Registry number of the bonded wine cellar;
- (b) For each product manufactured from grapes or berries, variety of grape or berry;
- (c) For concentrate, fold;
- (d) For juice and fruit mash, whether volatile fruit flavor has been removed and, if so, whether the identical volatile fruit flavor has been restored; and
- (e) For concentrated juice, total solids content before and after concentration.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1392, as amended (26 U.S.C. 5511))

§ 18.64 Photographic copies of records.

Proprietors may record, copy, or reproduce records required by this part by any process which accurately reproduces or forms a durable medium for reproducing the original of records. Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced record the same as if it were the original record. The reproduced record will be treated and considered for all purposes as though it were the original record. All provisions of law and regulation applicable to the original record are applicable to the reproduced record.

§ 18.65 Annual report.

An annual report, on Form 1695(5520.2), of concentrate plant operations shall be prepared by each proprietor. The report will be forwarded to the regional regulatory administrator not later than 15 days after the close of the calendar year for which rendered. When a proprietor permanently discontinues the business of manufacturing concentrate, the proprietor shall submit the annual report not later than 15 days after such discontinuance and mark the report "Final Report."

PART 240—WINE

Section B. Part 240 is amended as follows:

Par. 1. The table of sections is amended to remove the section headings for §§ 240.359a and 240.359b and to revise the section headings for §§ 240.357, 240.358 and 240.359. The

revised section headings read as follows:

* * * * *

Sec.

240.357 General.

240.358 Use of volatile fruit-flavor concentrate in cellar treatment of natural wine.

240.359 Use of juice (or must) from which volatile fruit flavor has been removed.

* * * * *

Paragraph 2. Section 240.353 is revised. As revised, § 240.353 reads as follows:

§ 240.353 Concentrated and unconcentrated fruit juice.

Concentrated fruit juice reduced with water to its original density, or to 22 degrees Brix, or to any degree of Brix between its original density and 22 degrees Brix, and unconcentrated fruit juice reduced with water to not less than 22 degree Brix, shall be deemed to be juice for the purpose of standard wine production. Where concentrated fruit juice is received on bonded wine cellar premises from other than a concentrate plant, the proprietor shall procure from the producer a certificate stating the kind of fruit juice from which it was produced and the total solids content of such juice before and after concentration. Concentrated or unconcentrated fruit juice may be used in juice or wine made from the same kind of fruit for purposes of developing alcohol by fermentation or for sweetening as provided in this part. Concentrated fruit juice, or juice which has been concentrated and reconstituted, may not be used in standard wine production if at any time it was concentrated to more than 80 degrees Brix.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Paragraph 3. Sections 240.357 through 240.359 are revised. As revised, these sections read as follows:

§ 240.357 General.

A proprietor may receive volatile fruit-flavor concentrate for use in the production of wine as provided in this part. A proprietor may, for any legitimate reason, return volatile fruit-flavor concentrate to the concentrate plant from which it was received, if the proprietor of the concentrate plant consents to the return. If volatile fruit-flavor concentrate is not used immediately, it will be stored on the bonded premises separately from essences and flavors which may be on hand for use in the production of special natural wine. The proprietor shall record

the receipt or return of any volatile fruit-flavor concentrate in the manner required by § 240.915.

§ 240.358 Use of volatile fruit-flavor concentrate in cellar treatment of natural wine.

In the cellar treatment of natural wine, there may be added:

(a) To natural grape or berry wine of the winemaker's own production, volatile fruit-flavor concentrate produced from the same variety of grape or the same kind and variety of berry, or

(b) To natural fruit wine (other than grape or berry) of the winemaker's own production, volatile fruit-flavor concentrate produced from the same kind of fruit,

so long as the proportion of the volatile fruit-flavor concentrate to the wine does not exceed the proportion of the volatile fruit-flavor concentrate to the original juice (or must) from which it was produced.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 240.359 Use of juice (or must) from which volatile fruit flavor has been removed.

Juice (or must) or concentrated juice processed at a concentrate plant is deemed to be pure juice (or must) or concentrated juice even though volatile fruit flavor has been removed if, at such concentrate plant or at the bonded wine cellar, there is added to such juice (or must) or concentrated juice, or (in the case of a bonded wine cellar) to wine of the winemaker's own production made therefrom, either the identical volatile fruit flavor removed or:

(a) In the case of natural grape or berry wine of the winemaker's own production, an equivalent quantity of volatile fruit-flavor concentrate derived from the same variety of grape or the same kind and variety of berry, or

(b) In the case of natural fruit wine (other than grape or berry wine) of the winemaker's own production, an equivalent quantity of volatile fruit-flavor concentrate derived from the same kind of fruit.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§§ 240.359a and 240.359b [Removed]

Paragraph 4. Sections 240.359a and 240.359b are removed.

Paragraph 5. Section 240.915 is revised. As revised, § 240.915 reads as follows:

§ 240.915 Separate record of materials received and used.

Each proprietor producing wine shall

maintain a separate record showing the receipt and use or other disposition of basic winemaking materials, such as fruit, juice or concentrated juice. Where juice (or must) or concentrated juice is received from a concentrate plant, the record shall also show whether the identical volatile fruit flavor has been restored to such juice (or must) or concentrated juice, and further, as to any such concentrated juice, its original density. If volatile fruit-flavor concentrate is received for use in the cellar treatment of natural wine, as authorized in Subpart O of this part, the record shall also show the receipt of such concentrate, a notation regarding any loss in transit or other discrepancy, the fold of such concentrate, the percent of alcohol by volume contained therein, and the use or other disposition of such concentrate. The record must show the date of receipt, the quantity received, the name and address of the person from whom received, and the date of use or other disposition of the materials. The invoices or commercial papers showing the receipt of materials will be retained in chronological order in support of the record. If materials are received off bonded premises and subsequently transferred to the bonded premises, the record will be maintained only with respect to materials received on the bonded premises and will show the date of transfer and quantity transferred, but the invoices or commercial papers covering the purchase of the materials will also be kept available for inspection. Where grapes (or other fruit) received on the bonded premises are used in producing juice to be stored for future use or for removal, the record will show the quantities of grapes used and juice produced. Where fruit or juice is used to produce concentrated juice the record will show the quantity of fruit or juice used and the quantity of concentrated juice produced. The record must also show the use or other disposition of the juice or concentrated juice produced. At the close of each month the materials account will be balanced and the totals reported on Form 5120.17(702).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381 (26 U.S.C. 5367))

Signed: April 26, 1982.

Stephen E. Higgins,
Acting Director.

Approved: May 13, 1982.

John M. Walker, Jr.,
Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-14814 Filed 6-1-82; 8:45 am]

BILLING CODE 4810-31-M